

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 05-0475
RESPONSIBLE OFFICER
SALES AND WITHHOLDING TAX
For Tax Period 2001-2003

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Issue

I. Sales and Withholding Tax -Responsible Officer Liability

Authority: IC 6-2.5-9-3; IC 6-3-4-8(g); IC 6-8.1-5-1 (b).

The taxpayer protests the assessment of corporate withholding taxes against him as a responsible officer.

Statement of Facts

The taxpayer was a director of a corporation that did not remit the proper amount of sales and withholding taxes to Indiana for the tax period 2001-2003. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, sales taxes, interest, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Withholding Tax -Responsible Officer Liability

Discussion

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that, "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC 6-8.1-5-1(b).

The taxpayer contended that he merely loaned the corporation start-up and operating money and was not responsible for the payment of the taxes to the state. Further, he argued that he did not have any involvement with the operation of the corporation or control over the financial affairs of the corporation. The taxpayer offered adequate documentation to sustain his burden of proving that he was not responsible for the remittance of the trust taxes to the state during the tax period at issue.

Finding

The taxpayer's protest is sustained.

KMA/JMM/DK/06/22/03